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PETITION NOT PRINTED

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960.

No. 182

BERNARD WILSON, PETITIONER,

vs.

DONALD F. SCHNETTLER, ARTHUR E. DOLL and ROBERT E. WALTZ,

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 9, 1960.
CERTIORARI GRANTED JUNE 27, 1960.

Supreme Court of the United States

OCTOBER TERM, 1960.

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[fol. 1] (File Endorsement Omitted)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 59 C 1569

BERNARD WILSON, PETITIONER

vs.

DONALD F. SCHNITTLER, ARTHUR F. DOLL and ROBERT E. WALTZ, RESPONDENTS

TRANSCRIPT OF PROCEEDINGS OF OCTOBER 7, 1959

had in the above-entitled cause before the Honorable JULIUS H. MINER, one of the Judges of said Court, in his court room in the United States Court House at Chicago, Illinois, on October 7, 1959, at 10:00 o'clock, A.M.

APPEARANCES:

GERALD W. GETTY, ESQ., Public Defender of Cook County, Illinois;
JAMES J. DOHERTY, ESQ., Assistant Public Defender; (2600 South California Avenue, Chicago, Illinois),

on behalf of Petitioner;

[fol. 2] HON. ROBERT TIEKEN,
United States Attorney, by
JOHN PETER LULINSKI, ESQ.,
Chief Appellate Division, and
ROBERT N. CAFFARELLI, ESQ.,
Assistant United States Attorney,
(450 U.S. Court House, Chicago 4, Ill.)

on behalf of Respondents

Donald F. Schnettler,
Arthur F. Doll and
Robert E. Waltz
United States Treasury Department
Federal Bureau of Narcotics
(433 West Van Buren Street,
Chicago, Illinois.)

[fol. 3] (And thereupon the following proceedings were had herein:—

COLLOQUY BETWEEN COURT AND COUNSEL

BY THE CLERK: No. 59 C 1569, Bernard Wilson versus Donald F. Schnittler, et al.

Motion to set cause for hearing.

Your Honor, counsel asked that this be passed.

BY THE COURT: Very well.

(Thereupon the Court gave attention to other matters on the call, after which the following further proceedings were had herein:—)

BY THE CLERK: No. 59 C 1569, Bernard Wilson versus Donald F. Schnittler, et al.

Motion to set cause for hearing.

BY MR. LULINSKI: Good morning, your Honor.

BY MR. GETTY: Good morning, your Honor.

Counsel has pointed out that I have not affirmatively stated my jurisdictional grounds.

Will your Honor give me leave to amend?

BY THE COURT: I have forgotten now the case; I know you talked to me about it in chambers.

BY MR. GETTY: The Rea case, your Honor.

[fol. 4] Oh, this is Bernard Wilson.

BY THE COURT: This is not the same case we talked about?

BY MR. GETTY: Yes, it is, Judge.

BY THE COURT: What is it? What is the case about?

BY MR. GETTY: I was asking the Court to—

BY THE COURT: Oh, you are the one who gave me that citation?

BY MR. GETTY: Yes, Rea. The Rea citation.

BY THE COURT: I beg pardon?

BY MR. GETTY: The Rea, R-e-a, citation.

BY THE COURT: Yes, Rea.

Now, tell me something about it. Just refresh my recollection.

BY MR. GETTY: You mean this case or the Rea case?

BY THE COURT: What this case is about.

BY MR. GETTY: This case involves three federal agents, arresting a man without a warrant.

BY THE COURT: This is the reverse of the other case where they—

BY MR. GETTY: No. The only difference, Judge, is this, that they by-passed this District Court, and they [fol. 5] went over to the State court and they indicted him. The three federal men testified there. Now, the Federal Rules of Criminal Procedure are ignored. They pay no attention to them whatsoever over there.

In the Rea case the Supreme Court of the United States says the federal agent owes a duty to obey those federal rules, and that it is up to the District Court, sitting, to enforce those rules.

BY THE COURT: This is where you are asking for a declaratory judgment?

BY MR. GETTY: Yes, Judge.

Now, counsel has pointed out one thing, that the only reason I ask for a declaratory judgment is this, Judge, that in the Rea case, since they had been in the District Court, and there had been a hearing, counsel knew what his Honor's thinking was in that case, and knew that his Honor would suppress the evidence.

Now, in this case, I cannot be that presumptuous. I think that your Honor would suppress the evidence if you heard it. But the only way to ask you to hear it, as I see it, is to ask you under the declaratory judgment section, to hold a hearing, and ascertain, did they, in [fol. 6] fact, obey the federal rules that they should have obeyed?

Now, counsel points out that I hadn't made certain jurisdictional allegations, which is basic.

I will ask for a week to amend, to put those jurisdictional allegations in this complaint.

By the Court: When I said that counsel submitted an authority, I think he came into my chambers to ask for a preliminary order.

By Mr. Getty: Yes, we changed our mind, and we gave notice to bring it down here.

By the Court: You represent whom?

By Mr. Lulinski: I represent the agency, your Honor. My name is Lulinski. I am the head of the Appeal Division of the United States Attorney's office. I represent the three involved agents.

By the Court: I will give him leave to amend.

I would like him to a file a— Are you going to make a motion to strike?

By Mr. Lulinski: Well, your Honor, on discussing it with counsel this morning—and I don't know if your Honor has specifically read the complaint or not—I called [fol. 7] his attention to the fact that nowhere in the complaint is there any affirmative allegation of jurisdiction.

The cause, I assume, from reading the complaint, is predicated primarily upon a violation, I take it it was of the Fourth Amendment, by way of an illegal search and seizure, and the only jurisdictional allegation to support that in the complaint is a fleeting reference to Section 2201 of the Judicial Code.

Section 2201, of course, as your Honor is familiar, is our declaratory judgment section. And I think it requires no citation on my part—it has been ruled on many times, that the declaratory judgment section is only adjective law; it does not confer jurisdiction upon a Court to hear a cause of action.

I suggested to counsel that possibly the appropriate section, as it may or may not be, depending upon his view of the matter,—might be the Federal Question Section, Section 1331 of the Judicial Code.

By the Court: Frankly, I am not as well versed as you are, and you are too fast for me. I would have to sit down and examine it and read it. I am not following [fol. 8] it as clearly as you think I am.

But I will say this: When I first glanced through the Rea case, there is something in my mind that bothered me. I wasn't quite sold on it. I have forgotten now what it was, and I would have to refresh my recollection.

By Mr. Getty: I know what it is. I made a note of it.

By the Court: I may have told you or I may not have told you.

By Mr. Getty: I remember it.

By the Court: What was it?

By Mr. Getty: You said that there was a case in here the other day where you found an addict guilty.

By the Court: I said that this is just the reverse of the other case.

By Mr. Getty: Yes. That is it. You found a man guilty and you gave him the minimum.

By the Court: I was shocked to learn that that is the law of the Seventh Circuit, that the government—when the State suppresses evidence—

By Mr. Getty: Yes, that was it.

By the Court: That that evidence can be turned over to the federal government. And if the federal govern-[fol. 9] ment had no knowledge of its procurement illegally it may prosecute.

And our Seventh Circuit sustained that theory of law. And I rebelled against it. I found him guilty.

I stated in the record that I hoped some day they would review that situation and reverse themselves.

Now, this is just the reverse of it. Now you are saying that they by-passed it here and used it over there—by-passed it here without any hearing. And for me to have anticipated at the time that that is what might have happened in this court, if evidence were heard, would be presumptuous on my part at that stage of the game. And I wasn't impressed with the Rea case because that was not a declaratory judgment.

By Mr. Getty: That is true. That was an injunction.

By the Court: All right, now I recall the situation as I get it.

You amend your complaint.

You file a motion to strike, and file your briefs with it, and let him answer it, and I will learn all about it.

By Mr. Lulinski: Very well, your Honor.

[fol. 10] Your Honor is declaring the obverse of the so-called "Silver Platter Doctrine", which we have briefed many times in this court and in the Court of Appeals.

By the Court: Pardon me. I don't know what the "Silver Platter Doctrine" is.

By Mr. Lulinski: Well, that is the doctrine of where a violation of State law appears in the course of an arrest, but that does not preclude its use in the federal court.

By the Court: Let the record show that you are talking to a novice, so we will get down to the academic principles.

By Mr. Lulinski: Yes, your Honor, very well.

By Mr. Getty: How many days?

By the Court: Twenty days.

By Mr. Getty: For me to amend?

By the Court: Yes.

By Mr. Getty: I will amend in a week.

By the Court: One week, then.

By Mr. Lulinski: We will take ten days to file our response to your pleadings, if your Honor wants to set it down for hearing.

By the Court: On the briefs.

By Mr. Lulinski: Set it down on briefs?

[fol. 11] By the Court: Yes, I think so. And if I want to hear from you further, I will notify you.

By Mr. Lulinski: All right; thank you, your Honor.

By Mr. Getty: Does your Honor want a brief in support of my amended complaint?

By the Court: Yes. He will decide whether he wants to file a motion to strike, and if he does he will submit briefs. And you will have time to answer. Let's understand it now, without any order of Court: He may file his briefs and you can have ten days to answer.

By Mr. Getty: All right, Judge, thank you.

By Mr. Lulinski: Thank you, your Honor.

* * * * *

[fol. 11A] Reporter's and Clerk's Certificates to foregoing transcript omitted in printing

[fol. 12] (File Endorsement Omitted)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 59 C 1569

(Title Omitted)

AMENDED PETITION FOR DECLARATORY JUDGMENT—
Filed October 16, 1959

Now comes BERNARD WILSON, by his attorney Gerald W. Getty, Public Defender of Cook County, Illinois, by James J. Doherty, Assistant Public Defender, and petitions this Honorable Court pursuant to the provisions of Title 28, U.S.C.A., Section 2201 to:

1. Hold a hearing and to determine by declaratory judgment whether the respondents DONALD F. SCHNETTLER, ARTHUR E. DOLL and ROBERT E. WALTZ, federal narcotic agents, obeyed the Federal Rules of Criminal [fol. 13] Procedure when they arrested your petitioner BERNARD WILSON without a warrant on April 14th, A.D. 1959, at which time the respondents searched your petitioner and found certain narcotic drugs on his person, and

2. In the event that this Honorable Court finds that the search and seizure of your petitioner was illegal, that the Court impound the narcotic drugs seized pursuant to the provisions of Title 28 U.S.C.A., Section 2463, and that the Court perpetually enjoin the respondent federal narcotic agents from testifying in respect to the narcotic drugs so seized in the state criminal proceeding now pending in the Criminal Court of Cook County, Illinois entitled *People of the State of Illinois* v. *Bernard Wilson*, Indictment No. 59-2319.

In support of this Petition, your petitioner alleges:

1. Jurisdiction of this Honorable Court is based upon the supervisory powers of Federal Courts over federal law enforcement agencies.

2. Your petitioner is a citizen of the United States. [fol. 14] 3. That he was arrested by the respondent federal narcotic agents ARTHUR E. DOLL and ROBERT E. WALTZ on April 14th A.D. 1959 at about 7:30 A.M.; that he was searched by the respondents; that he was not shown a search warrant at any time; that a certain amount of narcotic drugs was seized from his person.

4. That subsequent to such search and seizure your petitioner was taken under arrest by the respondent federal agents and incarcerated in the Cook County Jail on a charge of unlawful possession of narcotic drugs. He was not taken before a United States Commissioner.

5. That your petitioner was thereafter in the July Term A.D. 1959 indicted by the Grand Jury of Cook County, Illinois, and charged with the crime of Unlawful Possession of Narcotic Drugs, i.e. the same narcotic drugs seized by the respondent federal agents.

6. That your petitioner was duly arraigned and entered a plea of not guilty on the 31st day of July A.D. 1959.

[fol. 15] 7. On the 3rd day of August A.D. 1959, your petitioner moved to suppress the evidence and a hearing was held in the Criminal Court of Cook County, Illinois, at which time the following facts and circumstances were developed:

(a) The respondents testified that they had a certain building under surveillance where they had information that narcotic drugs were being sold.

(b) That the respondents saw your petitioner approach the said building and enter the same; that a short time later they observed your petitioner leave the building whereupon they arrested him.

(c) That they could not state under oath whether he had the narcotic drugs in his possession before he entered the building under surveillance or not; that when they arrested him, they did not have a warrant for his arrest.

[fol. 16] 8. The motion to suppress the evidence was denied.

9. In determining the question of illegal search and seizure in the Criminal Court of Cook County, Illinois, the law of the forum was applied and the Federal rules of Criminal Procedure were not applied.

10. There is now pending in the Criminal Court of Cook County, Illinois a criminal case against the petitioner entitled *People of the State of Illinois vs. Bernard Wilson,* Indictment No. 59-2319, charging your petitioner with Unlawful Possession of Narcotic Drugs, i.e. the same narcotic drugs seized from your petitioner by the respondent federal agents; that your petitioner verily believes and therefore states the fact to be that the respondents will be called to testify in such case that the petitioner unlawfully had in his possession the narcotic drugs seized by the respondents on April 14th A.D. 1959.

WHEREFORE, your petitioner prays:

1. That this Honorable Court hold a hearing pursuant [fol. 17] to the provisions of Title 28, U.S.C.A., Section 2201, and determine by declaratory judgment whether the respondent federal narcotic agents DONALD F. SCHNETTLER, ARTHUR E. DOLL and ROBERT E. WALTZ acted in conformity with the strict standards imposed upon them by the Federal Rules of Criminal Procedure when they arrested and searched your petitioner.

2. That in the event that this Honorable Court finds that the search and seizure of your petitioner was illegal, that the Court impound the narcotic drugs seized pursuant to the provisions of Title 28 U.S.C.A., Section 2463, and that the Court perpetually enjoin the respondent federal narcotic agents from testifying in respect to the narcotic drugs so seized in the state criminal proceeding now pending in the Criminal Court of Cook County, Illinois entitled *People of the State of Illinois* v. *Bernard Wilson,* Indictment No. 59-2319.

/s/ Bernard Wilson
Petitioner

[fol. 18] *Duly sworn to by Bernard Wilson. Jurat omitted in printing.*

* * * *

[fol. 19] (File Endorsement Omitted)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

(Title Omitted)

MOTION TO DISMISS—Filed October 26, 1959

Now come the Respondents, DONALD F. SCHNETTLER, ARTHUR E. DOLL, and ROBERT E. WALTZ, by their attorney, R. TIEKEN, United States Attorney for the Northern District of Illinois, under Rule 12(b) of the Federal Rules of Civil Procedure, and move the Court as follows:

1. To dismiss the action because the petition fails to state a claim upon which relief may be granted.
2. To dismiss on the ground that the Court lacks jurisdiction over the subject matter of the action.
3. To dismiss this action or in lieu thereof quash service of process because the Attorney General of the United States has not been served.

/s/ R. Tieken
United States Attorney

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[fol. 20] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

No. 59 C 1569

(Title Omitted)

ORDER DISMISSING AMENDED PETITION FOR DECLARATORY JUDGMENT—Nov. 16, 1959

This cause coming on for hearing on the respondents' motion to dismiss the amended petition for declaratory judgment the parties come by their attorneys, and the Court being duly advised it is

ORDERED that said motion be and it hereby is allowed and that the amended petition for declaratory judgment be and it hereby is dismissed, and it is

FURTHER ORDERED that leave be and hereby is given to petitioner to proceed in forma pauperis and to file a notice of appeal as a poor person and that the Clerk of this Court prepare and transmit the Record on Appeal to the United States Court of Appeals for the Seventh Circuit, without prepayment of fees and costs.

[fol. 21] IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 12856

SEPTEMBER TERM, 1959—JANUARY SESSION, 1960

BERNARD WILSON, PETITIONER-APPELLANT

v.

DONALD F. SCHNETTLER, ARTHUR E. DOLL and ROBERT E. WALTZ, RESPONDENTS-APPELLEES

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

OPINION—March 21, 1960

Before SCHNACKENBERG and KNOCH, *Circuit Judges*, and GRUBB, *District Judge*.

GRUBB, *District Judge*. Petitioner, Bernard Wilson, appeals in *forma pauperis* from an order of the district court dismissing his amended petition for declaratory judgment wherein he prayed for a determination of the legality of his arrest and search without a warrant by the respondent federal narcotics agents. In the event the court found the search and seizure in violation of the requirements of the Federal Rules of Criminal Procedure, petitioner requested it to impound the seized narcotics and to perpetually enjoin respondents from testifying in respect thereto in a pending criminal proceeding in the Criminal Court of Cook County, Illinois.

The allegedly illegal arrest and search wherein respondents obtained narcotic drugs from the person of petitioner occurred on April 14, 1959, at 7:30 a.m. Wilson [fol. 22] was thereafter indicted and charged by the Grand Jury of Cook County, Illinois, with the crime of Unlawful Possession of Narcotic Drugs. After his arraignment and plea of not guilty in the Criminal Court of Cook County, Illinois, that court denied petitioner's

motion for suppression of the evidence obtained in the search and seizure.

Petitioner alleges that the following facts were developed at the hearing of the motion to suppress in the State court: The federal narcotics agents saw Wilson enter a certain building under surveillance where they had information that narcotic drugs were being sold. A short time later the agents observed him leaving the building. They then arrested and searched him without a warrant. The agents could not state under oath whether or not Wilson had narcotic drugs in his possession before he entered the building under surveillance.

Thereafter, petitioner, who is presently incarcerated in Cook County jail awaiting trial on the State charge, commenced the proceeding in the district court in question here.

Petitioner contends that the district court has jurisdiction of the subject matter of this proceeding under the court's "supervisory power over federal law enforcement agencies." He relies on *Rea* v. *United States*, 350 U.S. 214 (1956).

Decisive factual differences distinguish the *Rea* case from the instant proceeding. In *Rea* the tainted evidence was seized under invalid process of a federal court. There a United States commissioner issued the invalid warrant. The federal officials acted under color of the defective process. They disobeyed the Federal Rules of Criminal Procedure, promulgated by the Supreme Court and enacted as law by Congress.[1] A federal district court had previously ordered the suppression of the illegally obtained evidence in a then pending criminal action.

In the instant proceeding the arrest and search were without warrant. A State court has denied a motion to suppress the seized narcotics as evidence in a criminal action pending before it. There was no exertion of authority, lawful or otherwise, by a United States commis- [fol. 23] sioner or by any official acting under color of federal judicial authority. No federal court has been

[1] Title 18 U.S.C.A., Chapter 237, as amended, Rules of Criminal Procedure.

asked to admit in evidence the narcotic drugs obtained by seizure. The contraband drugs are not in the possession or custody of an officer of a federal court.

This case squarely raises the question asked by the dissenting minority in *Rea*: "Would the Court's decision have been different had there been no search warrant at all?" 350 U.S. 214, at 219.

The foundation of the *Rea* decision lies in the power of the federal judiciary to supervise federal law enforcement agencies acting pursuant to federal process or orders of federal courts. Principles governing the scope and applicability of the exercise of federal judicial supervision over all federal judicial proceedings to the end of a fair and orderly administration of criminal justice have been developed and established by a line of leading decisions.[2]

The supervisory power, implemented by federal rules governing procedure and evidence, commands the exclusion as evidence of the fruits of invasions of federal constitutional immunities against unlawful detention and unreasonable searches and seizures. The sanctions of exclusion do not have constitutional stature: they are not a command of the Fourth or Fifth Amendment. The reach of federal judicial sanctions is limited by the boundaries of the federal judicial supervisory power. The sanction may, therefore, be wielded against all federal law enforcement agencies as, for example, the federal courts and their officers, United States Commissioners, or other federal officials, whenever these agencies or officers are acting pursuant to federal judicial authority.

Congress and the federal judiciary generally have refrained from interfering with the internal affairs of the States in the administration of justice, subject to review by federal courts of any federal questions involved. *Douglas* v. *City of Jeannette*, 319 U.S. 157 (1943). The admissibility of evidence is a matter to be decided by the trial court where it is sought to be introduced in the

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[2] See *Wise* v. *Henkel*, 220 U.S. 556 (1911); *Weeks* v. *United States*, 232 U.S. 383 (1914); *McNabb* v. *United States*, 318 U.S. 332 (1943); and *Wolf* v. *Colorado*, 338 U.S. 25 (1949).

[fol. 24] light of constitutional principles and rules of evidence of the forum. The State court still has a right to protect all constitutional rights of the petitioner in ruling on the admissibility of evidence and in other ways upon the disposition of the case in that court. While searches and seizures or detentions, if unreasonable, may be in violation of the Constitution of the United States, the admission of unlawfully obtained evidence is not a denial of due process under the Fourteenth Amendment. See *Wolf* v. *Colorado*, 338 U.S. 25 (1949).

Principles of noninterference in State criminal affairs have been predicated on constitutional grounds and considerations of policy in balancing federal and State interests. The distinction that the illegal evidence was obtained by the activities of State and not federal officials is not material. The misconduct of federal officers may subject them to criminal penalties.[3] Unless these officers act under color of judicial authority or order of the federal courts, they are not subject to the federal judicial supervisory power, and the sanctions wielded by this power cannot intrude to restrain their testimony in a State criminal trial.

Without repudiating established principles governing the application of judicial supervision, *Rea* has extended the scope of the discretionary authority. It permits this power, acting on officials subject to it, to reach contemplated evidence in a pending State criminal action. The *Rea* decision is predicated on the authority to exercise supervision over federal officials only insofar as these officials act under color of federal judicial authority and owe obedience to the federal rules. The facts and the legal authority on which the *Rea* decision is based do not permit the conclusion that the court thereby intended to assume jurisdiction over all activities of the federal law enforcement authorities. We do not interpret the *Rea* decision as indicating that the Supreme Court holds that federal courts should directly or *indirectly* supervise or control the action of State courts on evidentiary problems while cases are pending in the State courts.

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[3] Cf. Title 18 U.S.C.A. § 2236, Searches without warrant.

There are other traditional remedies to protect federal constitutional rights.

[fol. 25] Respondent federal narcotics agents may have acted in violation of the Fourth Amendment and of the due process clause of the Fourteenth. They did not do so under color of federal judicial authority. The admission of the allegedly illegally seized narcotics has not been sought in a federal court. The contraband evidence is not under the jurisdiction of a federal court.[4]

Notwithstanding the reference in Rule 41(e)(1) to property "illegally seized without warrant," the activities of respondents are not within the scope of the federal criminal rules which govern procedure "*in the courts of the United States and before United States commissioners* • • •." (Emphasis added.) Rule 1, Federal Rules of Criminal Procedure. Whatever remedies petitioner may have for the alegedly illegal conduct of the agents, these do not include the relief prayed for. There is no statutory or decisional authority directing the restraint by the federal courts of the officer's proposed testimony in a State criminal action, or the impounding of the narcotic drugs, where the criticized activities of these officers were not and have never been brought within the effective sphere of federal judicial supervision.

Considerations of policy would constrain the denial of a discretionary exercise of judicial supervision in this case were such power vested in the federal courts. By enactment of the Narcotic Control Act of 1956, Congress has shown its growing concern with the problem of use and traffic in narcotic drugs. As part of this legislation, Congress has charged the Secretary of the Treasury to join with the States in the suppression of the abuse of narcotic drugs by cooperating "in the institution and prosecution of cases in the courts of the United States and before • • • courts of the several States, • • •." Title 21 U.S.C.A. § 198. Congress has further conferred statutory

[4] The statute providing for impounding of evidence seized under any revenue law of the United States, Title 28 U.S.C.A. § 2463. Property taken under revenue law not repleviable, does not independently create jurisdiction. Its operation depends on possession or control over the contraband by an officer of the court.

authority on federal narcotic agents, members of the executive branch of the government and not of the judiciary to execute warrants, and recognized the right of these officers to make arrests without warrant under certain circumstances. Title 26 U.S.C.A. § 7607. Further [fol. 26] legislative considerations giving rise to the passing of these statutes are set forth in the margin.[5]

[5] Narcotic Control Act of 1956, House Report No. 2388, U. S. Code, Cong. and Adm. News, 1956, p. 3274, at p. 3283:

"Because narcotic drugs and marihuana are small in volume and high in price, the enforcement program with respect to the elimination of the illicit traffic has required constant vigilance on the part of the responsible Federal agencies. It is the view of your committee that these Federal agencies are to be commended for the outstanding work they have done in this field. Because present law has proved inadequate and in some cases has placed serious obstacles in the path of enforcement officers your committee is recommending appropriate changes in the applicable statutes.

"For example, recent court decisions have tended, under certain circumstances, to furnish the criminal with a cloak of immunity to the detriment of society as a whole. These decisions have forced changes in recognized investigative procedures which have been sanctioned by the courts for many years. The narcotic traffickers, who are in most cases well organized professional racketeers, take full advantage of any limitations placed on enforcement officers. In some instances enforcement officers have been restricted in their right to arrest without a warrant, and to search and seize contraband before and after a valid arrest. The use of evidence of admissions and of confessions following an arrest has been curtailed. The enforcement officers have been required to secure an arrest warrant or a search warrant, even though circumstances indicate the impracticability of such a procedure. The delay involved in obtaining a warrant permits the destruction or removal of the narcotic evidence and allows the narcotic traffickers to escape prosecution for their crime. These and other restrictions on enforcement officers leave the public unprotected and give narcotic violators, especially the more reprehensible, larger racketeers and wholesalers, an advantage over law-enforcement officers in their efforts to combat the illicit narcotic traffic.

"Accordingly, your committee urges that the corrective measures provided in H.R. 11619 be enacted immediately to permit enforcement officers to operate more effectively. To this end H.R. 11619 would provide for (1) authorization for more effective searches and seizures in narcotic cases; (2) authority for Federal agents to carry firearms, to execute and serve warrants, and to make arrests without warrants for narcotic violations under

In the light of the expressed legislative concern for the gravity of the narcotics problem, the greater power conferred on federal narcotics agents, and the desire for closer federal and State relations within this context, interference by federal judicial intervention in a State criminal proceeding is not warranted. Intervention at this posture of the State case, in effect, would result in granting a federal review of an interlocutory State court order. The imminence of a trial on a narcotics charge is not such irreparable injury as demands injunctive relief [fol. 27] under principles of judicial supervision. Cf. *Douglas* v. *City of Jeannette*, 319 U.S. 157 (1943).

In view of this decision it becomes unnecessary to pass on the question of a jurisdictional defect arising from the allegedly improper service of process, *i.e.* the failure to serve the United States.

For the reasons stated herein, the order of the district court dismissing the amended petition is hereby

AFFIRMED.

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certain circumstances; (3) a statutory method to grant immunity to witnesses in cases involving a violation of the narcotic or marihuana laws; (4) the United States to have the right of appeal from certain court orders granting a defendant a motion to suppress evidence or to return seized property; and (5) the strengthening of the applicable venue provisions so that venue in marihuana cases would lie within the jurisdiction in which a trafficker was apprehended as well as in the jurisdiction of acquisition."

[fol. 28] IN UNITED STATES COURT
OF APPEALS
FOR THE SEVENTH CIRCUIT

• • • •

No. 12856

BERNARD WILSON, PETITIONER-APPELLANT

vs.

DONALD F. SCHNETTLER, ARTHUR E. DOLL and ROBERT E. WALTZ, RESPONDENTS-APPELLEES

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

JUDGMENT—March 21, 1960

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, in accordance with the opinion of this Court filed this day.

• • • •

[fol. 29] Clerk's Certificate to foregoing Transcript (omitted in printing)

[fol. 30] SUPREME COURT OF THE UNITED STATES

(Title Omitted)

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—June 27, 1960.

ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Seventh Circuit.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1042 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

June 27, 1960

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